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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,014	03/26/2004	David G. Wild	CV0330 NP	9570
26079 7590 08/09/2007 BRISTOL-MYERS SQUIBB COMPANY 100 HEADQUARTERS PARK DRIVE SKILLMAN, NJ 08558			EXAMINER THANH, QUANG D	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 08/09/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

SP

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/811,014	<b>Applicant(s)</b> WILD ET AL.	
	<b>Examiner</b> Quang D. Thanh	<b>Art Unit</b> 3771	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
  - b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 27 July 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ They raise the issue of new matter (see NOTE below);
  - (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

- 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
- 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
- 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_  
 Claim(s) objected to: \_\_\_\_\_  
 Claim(s) rejected: 1-3, 5, 7, 8, 10, 11, 14, 19 and 20.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

- 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
- 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
- 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

- 11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
- 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
- 13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE: The amendment has changed the scope of the claims requiring further consideration and/or search, for example in claim 1 adding "consists of" is a further limitation never before considered.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 7/27/2007 have been fully considered but they are not persuasive. In response to applicant's argument that "from reading Barak, et al., one of ordinary skill in the art would believe that it is essential to pressurize the thigh in order to obtain benefit from that device", the examiner respectfully disagrees. There is no evidence disclosed in Barak et al. to teach that the device would not work without the thigh cuff. Furthermore, since Barak already teaches that "the number of cells in the sleeve can vary, according to the desired treatment" (col. 10, lines 34-35) and "various changes, omissions to the form and detail thereof may be made therein" (col. 10, lines 38-40), therefore there appears to be no unobviousness for Barak to apply pressure only to the foot and leg, especially in view of the teaching of Calderon, which clearly teaches a compression device having a sleeve consisted of a leg cuff 2B-D and a foot cuff 2A (fig. 1); the leg cuff comprises only three cells: a gaiter cell 2B adapted to wrap around the lower limb in the region closest to the ankle, a mid-calf cell 2C adapted to wrap around the lower limb above the region occupied by the gaiter cell and an upper cell 2D adapted to wrap around the lower limb in the region between the mid-calf cell and the knee in the form of a shoe, boot or stocking (col. 3, lines 40-43) for treatment of edema and varicose veins (see abstract) to a lower limb (fig. 1). In response to applicant's argument that "Barak, et al. does not suggest that it is possible to eliminate the thigh cuff and it certainly does not teach that doing so would make an effective device", the applicant's attention is directed Barak's teaching in col. 10, lines 38-40, which clearly stated that "various changes, emissions to the form and detail thereof may be made therein" and thus omissions of the thigh cuff is possible, especially in view of the teaching of Calderon as discussed above. Applicant has not provided evidence that the Barak's device would not work effectively if the thigh cuff is eliminated. Moreover, it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184.



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PRIMARY EXAMINER